

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
ATTORNEYS AT LAW

1300 MOUNT KEMBLE AVENUE
P.O. BOX 2075
MORRISTOWN, NEW JERSEY 07962-2075
(973) 993-8100
FACSIMILE (973) 425-0161

J. Michael Riordan, Esq.
Tel. (973) 425-8676
jmriordan@mdmc-law.com

June 2, 2014

VIA E-FILING

Honorable John F. Keenan, U.S.D.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

**Re: In re Application of Dr. Heleen Mees
Case No. 14-MC-00056-P1**

Dear Judge Keenan:

This firm represents Citigroup Inc. ("Citi")¹ in the above-captioned matter, which is now before the Court as a result of Dr. Heleen Mees' (Mees) May 22, 2014 request for an Order granting her March 10, 2014 Application pursuant to 28 U.S.C. § 1782(a) (the "Application to Citi")². Specifically, Mees' Application to Citi, as filed, seeks leave to issue subpoenas to Citi for the production of documents and the taking of depositions, purportedly to be used to determine if Mees has grounds to file a lawsuit in the Netherlands (to which Citi would not be a party). After filing the Application to Citi, Mees filed a virtually identical Application seeking discovery from Willem Buiter ("Buiter") (the "Application to Buiter"). In fact, all of the documents sought in the Application to Buiter are sought in the Application to Citi, and like the Application to Citi, the Application to Buiter is premised on the theory that Mees needs the discovery sought in order to file the Netherlands lawsuit.

¹ References herein to "Citi" shall mean Citigroup Inc., its subsidiaries, and its and their affiliates, including, but not limited to Citigroup Global Markets Inc.

² On May 23, 2014, Judge Gardephe ordered that Citi and Buiter file any opposition to the Application to Citi by June 2, 2014, and further ordered that oral argument on the matter would be heard before Your Honor on June 5, 2014. Counsel for Buiter has indicated that he will file opposition in light of Judge Preska's ruling. For its part, in lieu of a formal brief in opposition, Citi submits this letter to clarify the procedural history of this matter and to set forth Citi's position on the disposition of the Application.

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On May 6, 2014, Judge Preska denied the Application to Buiter, in its entirety, holding that Mees was not entitled to the discovery sought because, *inter alia*, it was not necessary to frame a Complaint. For the reasons summarized herein, Citi believes that Mees' Application to Citi is collaterally estopped by Judge Preska's ruling. If, however, the Court declines to follow Judge Preska's ruling on essentially the same Application Mees sought as to Buiter, then the Application to Citi should be narrowed materially in accordance with the Parties' negotiations with respect thereto, *i.e.*, to provide for a narrower document production and no depositions at this time (or without further opportunity for Citi after any document production, to address why any depositions are unnecessary).

The Procedural History

The procedural history in this matter is relatively straight forward, yet an accurate recitation of recent events is conspicuously absent from Mees' pending request for approval of the Application to Citi. Critically, Mees' allegation that Citi did not object to the Application to Citi and that it should therefore be approved in its entirety is false. While Citi did not submit an omnibus opposition to the Application to Citi, Citi did have multiple objections to the document and depositions requested therein. Thus, Citi, which is essentially an interpleader party, involved in this matter merely as a custodian of documents, undertook significant time and expense to negotiate with Mees to reach agreement on (1) a narrowed scope of the document requests (including, for example, the specific search terms that Citi would utilize when searching for documents), and (2) a Consent Protective Order (to which Buiter is also a Party).

Additionally, Citi and Mees agreed to table the issue of depositions of Citi employees until Mees reviewed Citi's production. Thereafter, the Parties agreed they would discuss whether depositions were, in fact, necessary, or, if any further information were legitimately required whether it could be obtained by written questions in order to avoid burdening non-party witnesses who may reside in foreign jurisdictions. Citi absolutely reserved all rights to object to the deposition notices in the event that Citi and Mees ultimately reached impasse. In sum, Mees' suggestion that Citi did not object to the Application to Citi is misleading and ignores the painstaking negotiations that took place throughout March and April 2014.³

Regardless, prior to Citi making any production, on May 6, 2014 Judge Preska issued her ruling on the Application to Buiter. Within hours, counsel for Buiter wrote to counsel for Mees asking if she would agree to withdraw the Application to Citi. Counsel for Buiter further inquired of Citi whether, in the event Mees would not withdraw the

³ Citi initially declined to submit an omnibus objection only because Mees and Citi instead negotiated over multiple objectionable portions of the Application, in the event that the Court does not deny the Application, Mees should not be permitted to ignore the negotiated terms she agreed to with Citi, and those terms should be incorporated into any Order issued by the Court.

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Application to Citi, Citi would agree not to produce documents until Buiter had the opportunity to move for a protective order precluding any production in light of Judge Preska's ruling. In response, counsel for all three Parties agreed to hold any production of documents in abeyance while Mees considered her options in light of Judge Preska's ruling. Specifically, counsel for Mees stated as follows:

I do agree that it makes no sense for Citi to produce any documents if we withdraw the application, so I agree that you should hold off, as we consider the request for withdrawal. In other words, I am not expecting that you produce the documents in the meantime, and I'm not asking or insisting that you do.

May 6, 2014 Correspondence from Olav Haazen to J. Michael Riordan, attached hereto as Exhibit A.

Thereafter, Citi received no communication from Mees' counsel indicating whether Mees planned to pursue the Application to Citi. Then, more than two weeks later, after Judge Preska's time as the assigned Part I judge expired, Mees wrote to Judge Gardephe requesting approval of the Application to Citi. While Citi will obviously abide the Court's ruling, Citi agrees (like Judge Preska) with Buiter's arguments regarding the lack of merit of Mees' Applications, and Citi notes that the timing of Mees' instant request to the Court suggests an attempt to undermine Judge Preska's thorough decision.

In sum, the procedural history confirms that Citi did in fact have multiple objections to the Application to Citi, which it attempted to negotiate with Mees. Then, before any subpoenas were issued, and before Citi made any production, Judge Preska denied an identical Application to Buiter. The Parties then agreed to hold any production by Citi in abeyance while Mees decided whether to withdraw the Application to Citi. When Mees then decided to pursue the Application, she did so after waiting several weeks when she knew she could direct her request to a Judge other than Judge Preska. Gamesmanship aside, Citi is unaware of any factors that distinguish the Application to Citi from the Application to Buiter that was already denied, and thus, given that the discovery sought in both Applications is identical, Citi agrees with Buiter that Mees should be estopped from seeking the same discovery from Citi that Judge Preska already denied from Buiter.

Conclusion

In light of the foregoing, Citi joins in Buiter's request that the Court deny Mees' request for an Order and dismiss the Application to Citi. In the alternative, if the Court does issue an Order requiring discovery, Citi requests that the Order incorporate the Parties' Consent Protective Order, and the other agreements between Citi and Mees

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regarding the scope of any document production and the treatment of the deposition notices to Citi's non-party witnesses.

Counsel for Citi will appear for oral argument on June 5, 2014 in accordance with Judge Gardephe's instructions. If the Court requires any additional briefing prior to oral argument we will comply as soon as possible. We thank the Court for its consideration of this matter.

Respectfully submitted,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

s/ J. Michael Riordan

J. Michael Riordan

JMR/lbm

cc: Olav A. Haazen, Esq.
Adrienne Koch, Esq.

EXHIBIT A

From: Olav Haazen [<mailto:OHaazen@BSFLLP.com>]
Sent: Tuesday, May 06, 2014 7:35 PM
To: J. Michael Riordan; Cora MacLean; 'Koch, Adrienne B.'
Subject: RE: Mees/Citi

Michael – like yourself, we are also trying to figure out what our position is. And like yourself and Adrienne, I also need to review the transcript, so I suggest we all do that first when it becomes available. Meanwhile, I do agree that it makes no sense for Citi to produce any documents if we withdraw the application, so I agree that you should hold off, as we consider the request for withdrawal. In other words, I am not expecting that you produce the documents in the meantime, and I'm not asking or insisting that you do.
I need to attend to family matters now. Let's plan on discussing tomorrow afternoon if necessary.

From: J. Michael Riordan [<mailto:jmriordan@mdmc-law.com>]
Sent: Tuesday, May 06, 2014 7:00 PM
To: Olav Haazen; Cora MacLean; 'Koch, Adrienne B.'
Subject: RE: Mees/Citi

Olav-First, we inquired about your position in response to Adrienne's initial question to you. We also advised that if you declined her request or failed to respond that we believe that it is appropriate, given what Ms. Koch relayed transpired in Court today, to hold any production by Citi to afford Ms. Koch the opportunity to make an emergent application to Judge Preska to ascertain if Judge Preska will extend that ruling to any proposed production by Citi.

Please advise if you would like to discuss and in the interest of time we will make ourselves available for a conference call with you and Ms. Koch.

Regards, JMR

MDM C


www.mdmc-law.com
1300 Mt. Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075

J. Michael Riordan
Partner
McElroy, Deutsch, Mulvaney & Carpenter, LLP
 jmriordan@mdmc-law.com
 Download vCard
 973-425-8676
 973-425-0161

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From: Olav Haazen [<mailto:OHaazen@BSFLLP.com>]
Sent: Tuesday, May 06, 2014 6:52 PM
To: Cora MacLean; 'Koch, Adrienne B.'; J. Michael Riordan
Subject: RE: Mees/Citi

Cora-

You wrote yesterday that Citi would be making "a complete production on Wednesday" (i.e. tomorrow). Am I reading your message below correctly that it is now Citi's position that it will not make a production while we determine if we will agree to withdraw the application?

Sent with Good (www.good.com)

-----Original Message-----

From: Cora MacLean [cmaclean@mdmc-law.com]
Sent: Tuesday, May 06, 2014 05:33 PM Eastern Standard Time
To: 'Koch, Adrienne B.'; J. Michael Riordan; Olav Haazen
Subject: RE: Mees/Citi



Olav,

Please advise if you have a response to Adrienne's question regarding withdrawal of the Citi Application. Given our understanding of today's ruling (subject to receipt of the transcript), if you do not agree to withdraw the Citi Application we feel it would be prudent to allow Adrienne time to file for emergent relief, which we understand she would do this week. Please advise at your earliest convenience. Thank you.

Cora

MDMC


www.mdmc-law.com
1300 Mt. Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075

Cora MacLean
Associate
McElroy, Deutsch, Mulvaney & Carpenter, LLP
 cmaclean@mdmc-law.com
 Download vCard
 973-425-4233
 973-425-0161

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From: Koch, Adrienne B. [<mailto:AKoch@katskykorins.com>]
Sent: Tuesday, May 06, 2014 3:12 PM
To: J. Michael Riordan; Olav Haazen
Cc: Cora MacLean
Subject: Mees/Citi

Dear Counsel:

Please see attached letter. Thank you.

Best regards,
Adrienne

Adrienne B. Koch
Katsky Korins LLP
605 Third Avenue
New York, New York 10158
www.katskykorins.com
tel: 212-716-3225
direct fax: 212-716-3349
email: akoch@katskykorins.com

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